

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

**No. CV 16-0289-WJ-LAM
CR 11-2011-WJ**

DUSTIN DEAN,

Defendant/Movant.

ORDER

THIS MATTER is before the Court, *sua sponte* under Rule 4(b) of the Rules Governing Section 2255 Proceedings For the United States District Courts, on Defendant/Movant's amended *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (CV Doc. 5; CR Doc. 38), response to the Court's Order to Cure Deficiency [CV Doc. 6; CR Doc. 40], which the Court liberally will construe as a supplement to Defendant/Movant's amended § 2255 Motion, and *Application to Proceed in District Court Without Prepaying Fees or Costs* (CV Doc. 2; CR Doc. 37). Because it appears from the record that Defendant/Movant has previously been found indigent [CR Doc. 9], the Court will deny Defendant/Movant's motion to proceed *in forma pauperis* as moot [CV Doc. 2; CR Doc. 37]. Because Defendant/Movant's amended § 2255 motion and supplement are not subject to summary dismissal, the Court will direct the United States to file an answer.

IT IS THEREFORE ORDERED that Defendant/Movant's *Application to Proceed in District Court Without Prepaying Fees or Costs* (CV Doc. 2; CR Doc. 37) is **DENIED** as moot;

IT IS FURTHER ORDERED that the Clerk is directed to forward to the United States of America a copy of Defendant/Movant's amended *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (CV Doc. 5; CR Doc. 38), supplement to the amended § 2255 Motion [CV Doc. 6; CR Doc. 40], and supporting papers and exhibits, if any, together with a copy of this Order;

IT IS FURTHER ORDERED that, **within twenty-three days of entry of this Order**, the United States answer Defendant/Movant's amended § 2255 motion.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE